LEGAL NOTES.

UNITED STATES JUDICIAL SYSTEM—RECENT CHANGE. By an act passed at the recent session of Congress the Supreme Court is to consist hereafter of nine judges, six of whom shall be a quorum. The act also provides for the appointment of a circuit judge in each circuit, with the same powers as the judges of the Supreme Court now have on circuit. The Circuit Court is to be held by the judge of the Supreme Court assigned to the circuit, or the circuit judge, or the judge of the District Court, or by any two of them sitting together. We do not perceive that the jurisdiction of the Circuit Court is in anywise affected, the sole purpose of this part of the act being apparently to relieve the judges of the Supreme Court from the pressure of their present circuit duty.

But the feature of the act which attracts special attention is a clause providing that "any judge of any court of the United States who shall, after having attained the age of seventy years, and served for the term of ten years, resign his office, shall thereafter during the rest of his natural life, receive the same salary which was by law payable to him at the time of his resignation." This we believe is the first provision ever made in the United States for a retiring pension for those who have devoted themselves to the public service. Regarding it as we do, as a decided step forward in civilization and good government, we trust that it may be a permanent portion of our judicial system.

MEMBER OF CONGRESS—PRIVILEGE FROM ARREST. *Kimberly* v. *Benjamin F. Butler* was an action of *assumpsit* for money which plaintiff alleged defendant had illegally compelled him to pay as rent, while defendant was in command at Fortress Monroe during the war. The action was brought originally in the Superior Court of Baltimore, but removed into the United States Circuit Court, where defendant pleaded his privilege as a member of Congress in abatement of the action, to which plea plaintiff demurred. The question was similar to that raised in *Wooley* v. *Butler*, antè, p. 53, and was argued by *R. J. Brent* and *W. M. Addison*, Esqs., for plaintiff, and Hon. *Caleb Cushing* for General Butler. CHASE, C. J., held that the privilege of exemption from *arrest* means from *arrest with a view to imprisonment*, and does not extend to exemption from service of summons or other process not involving detention of the *person* of defendant. This agrees with the decision of DOBBIN, J., in *Wooley* v. *Butler*, antè, p. 53.

STATE GOVERNMENTS—REORGANIZATION AFTER THE REBELLION—ALIENATION OF STATE PROPERTY DURING THE WAR. *The State of Texas* v. *White et al.*, in the Supreme Court of the United States, was an original suit, in which the state of Texas, claiming certain bonds of the United States as her property, asks an injunction to restrain the defendants from receiving payment from the national government, and to compel the surrender of the bonds to the state.

The United States, by Act of September 9th 1850, offered to the state of Texas, in compensation for her claims connected with the settlement of her boundary, $10,000,000 in five per cent. bonds, which offer was accepted by Texas.

One-half of these bonds were retained for certain purposes in the national treasury, and the other half were delivered to the state.

The bonds thus delivered were dated January 1st 1851, and were all made payable to the state of Texas, or bearer, and redeemable after the 31st day of December 1864.

They were received, in behalf of the state, by the comptroller of public accounts, under authority of an act of the legislature which, besides giving that authority, provided that no bond should be available in the hands of any holder until after endorsement by the governor of the state.

After the breaking out of the rebellion, the insurgent legislature of Texas, on the 11th of January 1862, repealed the act requiring the endorsement of the governor,[1] and, on the same day, provided for the organization of a military board, composed of the governor, comptroller, and treasurer, and authorized a majority of that board to provide for the defence of the state by means of any bonds in the treasury, upon any account, to the extent of $1,000,000.[2]

The defence contemplated by the act was to be made against the United States by war.

Under this authority the military board entered into an agreement with George W. White and John Chiles, two of the defendants, for the sale to them of one hundred and thirty-five of these bonds, then in the treasury of the state, and seventy-six more, then deposited with Droege & Co., in England, in payment for which they engaged to deliver to the board a large quantity of cotton cards and medicines. This agreement was made on the 12th of January 1862.

On the 12th of March 1862, White and Chiles received from the military board 135 of these bonds, none of which were endorsed by any governor of Texas.

Afterward, in the course of the years 1865 and 1866, some of the same bonds came into the possession of others of the defendants by purchase, or as security for advances of money.

Chief Justice CHASE, on April 12th, delivered the opinion of the court, holding the following points:—

1. The word state describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country, or territorial region, inhabited by such a community; not unfrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government.

2. In the Constitution the term state most frequently expresses the combined idea just noticed of people, territory, and government. A state, in the ordinary sense of the Constitution, is a political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed.

3. But the term is also used to express the idea of a people or political community as distinguished from the government. In this sense it is used in the clause which provides that the United States shall guarantee to every state in the Union a republican form of government, and shall protect each of them against invasion.

[1] Acts of Texas, 1862, p. 45. [2] Texas Laws, 1862, p. 55.

4. The Union of the states never was a purely artificial and arbitrary relation. It began among the colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction, from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And, when these articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union."

5. But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government, by the states. On the contrary, it may be not unreasonably said that the preservation of the states, and the maintenance of their governments, are as much within the design and care of the Constitution, as the preservation of the Union and the maintenance of the national government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states.

6. When Texas became one of the United States she entered into an indissoluble relation. The union between Texas and the other states was as complete, as perpetual, and as indissoluble, as the union between the original states. There was no place for reconsideration, or revocation, except through revolution, or through consent of the states.

7. Considered as transactions under the Constitution, the ordinance of secession adopted by the convention, and ratified by a majority of the citizens of Texas, and all the acts of her legislature, intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The state did not cease to be a state, nor her citizens to be citizens of the Union.

8. But, in order to the exercise, by a state, of the right to sue in this court, there needs to be a state government, competent to represent the state, in its relations with the national government, so far, at least, as the institution and prosecution of a suit is concerned.

9. While Texas was controlled by a government hostile to the United States, and, in affiliation with a hostile confederation, waging war upon the United States, no suit instituted in her name could be maintained in this court. It was necessary that the government and the people of the state should be restored to peaceful relations to the United States, under the Constitution, before such a suit could be prosecuted.

10. Authority to suppress rebellion is found in the power to suppress insurrection and carry on war; and authority to provide for the restoration of state governments, under the Constitution, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. The latter, indeed, in the case of a rebellion, which involves the government of a state, and, for the time, excludes the national authority from its limits, seems to be a necessary complement to the other.

11. When slavery was abolished the new freemen necessarily became part of the people; and the people still constituted the state: for states, like individuals, retain their identity, though changed, to some extent, in their constituent elements. And it was the state, thus constituted, which was now entitled to the benefit of the constitutional guaranty.

12. In the exercise of the power conferred by the guaranty clause, as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed. It is essential only that the means must be necessary and proper for carrying into execution the power conferred, through the restoration of the state to its constitutional relations, under a republican form of government, and that no acts be done, and no authority exerted, which is either prohibited or unsanctioned by the Constitution.

13. So long as the war continued, it cannot be denied that the President might institute temporary government within insurgent districts, occupied by the national forces, or take provisional measures, in any state, for the restoration of state government faithful to the Union, employing, however, in such efforts, only such means and agents as were authorized by constitutional laws. But the power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress, though necessarily limited to cases where the rightful government is subverted by revolutionary violence, or in imminent danger of being overthrown by an opposing government, set up by force within the state.

14. The several executives of Texas, partially at least, reorganized under the authority of the President and of Congress, having sanctioned this suit, the necessary conclusion is, that it was instituted and is prosecuted by competent authority.

15. Public property of a state, alienated during rebellion by an usurping state government for the purpose of carrying on war against the United States, may be reclaimed by a restored state government, organized in allegiance to the Union, for the benefit of the state.

16. Exact definitions, within which the acts of a state government, organized in hostility to the Constitution and government of the United States, must be treated as valid or invalid, need not be attempted. It may be said, however, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government; and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must, in general, be regarded as invalid and void.

17. Purchasers of United States bonds issued payable to the state of Texas or bearer, alienated during rebellion by the insurgent government, and acquired after the date at which the bonds became redeemable, are affected with notice of defect of title in the seller.

Sir James Plaisted Wilde, the Judge of Probate of England, and Judge Ordinary of the Court of Divorce and Matrimonial Causes, has been raised to the peerage, and will be known hereafter as Lord Penzance.

American Heirs to English Estates.—Hon. J. P. Benjamin, formerly a senator from Louisiana, then Attorney-General and Secretary of State of the Confederate States, is now practising law in London,

whence he has lately written a letter exposing the humbug of getting up claims in America, of heirship to immense English estates, which either have no existence whatever, or certainly are not in abeyance waiting for some unknown American heir to come and take them.

We do not suppose that any reputable American lawyer is likely to be misled, or to mislead his clients on this subject, but as there seems to be a considerable popular delusion about it, we are glad to see the matter quieted by a word from so good a lawyer as Mr. Benjamin.

MEDICAL PRACTITIONERS—LEGISLATION AGAINST QUACKS. We learn from the *Medical Record* of New York, that the state of Minnesota has passed an act (March 4th 1869) providing that no person who has not attended at least two full courses of medical instruction and graduated at some school of medicine, or who cannot produce a certificate of qualification from some state or county medical society, shall practise medicine in any of its departments, or perform any surgical operation for compensation within the state, and providing a fine of not less than fifty or more than one hundred dollars for the first violation of the act, and thirty days' imprisonment for the second. The act also provides that every practitioner shall, before October 1869, file in the office of the court of the county in which he resides a sworn copy of his diploma or certificate aforesaid, and the omission to do so, shall be *primâ facie* evidence that he has not graduated, &c., as required by the act. The act does not, however, apply to persons practising dentistry exclusively.

ATTORNEY DISBARRED. *Francis N. Fitch*, an attorney, has been struck off the rolls by the Supreme Court of New York, in the fifth judicial district, at Syracuse, January Term 1869, for fraud and misconduct as an attorney.

AGENT—TAKING OF PROFITS ON PRINCIPAL'S MONEY—CUSTOM NOT VALID AGAINST RULES OF LAW. *Minnesota Central Railway Company* v. *Morgan*, in the Supreme Court of New York, December Term 1868. Defendants, who were brokers in the city of New York, issued to plaintiff letters of credit on London, to enable plaintiff to purchase iron. As security, defendants received $15,000 in money and a lien on all iron to be imported, and "on all policies of insurance on such goods to an amount sufficient to cover the advancements or engagements" of defendants. Defendants suggested insurance of the iron and were directed by plaintiff to make insurance, which they did by an open policy in their own name for account of whom it might concern in the Atlantic Mutual Ins. Co., giving their note for the amount of the premium.

Defendants then submitted a statement of the cost of insurance, and were directed by plaintiff to deduct it from the $15,000 already deposited, and shortly afterwards the parties closed their accounts. Subsequently the insurance company declared a scrip dividend to policy holders for that year, amounting in this case to $2800, which the company paid defendants. This was an action by plaintiff for an account and transfer of the scrip. Defendants claimed to hold the scrip for their own use, because the policy was issued in their name, and they gave the premium note, but principally on the ground of the custom of

agents insuring for others, sanctioned as it was claimed by the New York Chamber of Commerce, that all dividends should belong to the agent in lieu of other compensation. The court, per MULLEN, J., held that the custom was not satisfactorily proved, but, whether it was or not, no custom could avail against the positive rule of law, that an agent cannot appropriate to his own use any portion of the profits arising from the business of the agency.

REVENUE LAW—LANDING OF GOODS WITHOUT PERMIT. *United States* v. *Twenty Cases of Matches*, in the United States District Court for Wisconsin, was an information under section 50 of the Act of March 2d 1799, 1 Stat. 665, on a seizure of matches at Milwaukee for being unladen at that port from a vessel from Canada, without a permit. Claimants alleged that the matches were manufactured at Portland, Maine, and shipped in close packages via the Grand Trunk Railway, a corporation of Canada, to Chicago, that they were not intended to be opened between Portland and Chicago, and that the unlading of them at Milwaukee was without claimant's knowledge or consent. The Act of March 2d 1861, § 68, 12 Stat. 197, exempts from duty goods manufactured in the United States, exported to a foreign country, and brought back in the same condition as when exported. MILLER, D. J., held that the goods were subject to forfeiture. "The regulations of the treasury department relate to the transportation of goods while in their transit through the foreign country. These regulations may have been strictly complied with, but they have no relation to the duty imposed on the vessel to procure a permit for unlading the matches at the port of Milwaukee.

"The law under which this information is brought, prohibits the unlading or delivery of goods, wares, or merchandise brought from any foreign port or place, whether they be dutiable or not, without the permit of the collector. Nor is it any excuse or defence, that the master of the vessel put the goods ashore without the knowledge or consent of the owner or consignee. The revenue laws leave all errors or mistakes of shippers and carriers to be settled among the parties interested."

CRIMINAL LAW—PUNISHMENT AFTER REPEAL OF STATUTE CREATING THE OFFENCE—INTERNAL REVENUE. In *United States* v. *Finlay*, in the District Court of the United States, Western District of Pennsylvania, defendant was indicted under the Acts of June 30th 1864, sects. 15, 42, and 82, and March 2d 1867, sects. 94 (2 Brightly's Dig. title *Internal Revenue*, pl. 27, 48, 140), for making false returns of woollen manufactures with intent to violate the Internal Revenue Laws.

The tax on woollen goods was repealed by the Act of March 31st 1868. On motion, MCCANDLESS, D. J., quashed the indictment, holding that after a repeal of the law creating an offence, there is no jurisdiction to punish a violation of the act during its existence: *Comm.* v. *Duane*, 1 Bin. 601.

COLLECTOR OF INTERNAL REVENUE—LIABILITY ON HIS BOND. *The United States* v. *Thorn et al.*, in the United States District Court of New Jersey, February 1869, was an action on the official bond of a collector of internal revenue. The declaration averred that defendant had violated the first condition of the bond, that he shall "faithfully

discharge the duties of his office," by granting permits for the removal of distilled spirits from bonded warehouses in his district to bonded warehouses in another district, without exacting transportation bonds with sufficient sureties, in double the amount of taxes imposed on the spirits, as required by the Act of June 30th 1864, sect. 61, and the regulations of the treasury department. The evidence was that permits had been given for the removal of nearly one thousand barrels of whiskey, and on suing out the bond the sureties could not be found. No residence was attached to their names on the bond, and in some cases only the initials of their first names were given. The defence was that defendant had relied on a clerk, and therefore could not be held on the ground of negligence, and there was no evidence of corruption or any dishonest purpose. The evidence, however, failed to show that the clerk had been intrusted with the duty of examining the sufficiency of the sureties, and in some instances the permits had been issued before the bonds were handed to him. Under the charge of FIELD, J., the jury found a verdict for the United States for $100,000, the full amount of the defendant's bond. J. T. M.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MISSOURI.[1]

SUPREME COURT OF NEW YORK.[2]

ACCORD AND SATISFACTION.

Factors, who had agreed to insure property consigned to them, effected insurance to the amount of 41 per cent. only, and the property being destroyed by fire, they wrote to the consignors conceding their liability to account for all they had received from the insurers, and placed the amount to the credit of the consignors, hoping it would prove satisfactory. The consignors replied: "We supposed you were nearly insured in full; but if this is all we are entitled to, we must submit." And they drew a draft upon the factors for the amount received by them on account of insurance, which was paid: *Held* that, there being no dispute between the parties about the facts, or about the claim, this did not amount to an accord and satisfaction: *Beardsley et al.* v. *Davis*, 52 Barb.

AGREEMENT.

Acceptance of Proposition.—To constitute an agreement, it is not necessary that a proposition made by one party to another by letter, should be accepted expressly. If it is acted upon, and complied with, that is a sufficient acceptance: *Beardsley et al.* v. *Davis*, 52 Barb.

Thus, where the defendants, factors and produce commission mer-

[1] From T. A. Post, Esq., Reporter; to appear in 43 Mo. Reports.

[2] From Hon. O. L. Barbour; to appear in vol. 52 of his Reports.